IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1268 OF 1993

Suman Balasaheb Admuthe,
age 41 years, Occ: Household
duties, r/o Rajmane Chawl,
Raviwar Peth, Madhavnagar,
Tal. Miraj, Dist: Sangli. .... Petitioner

- Versus -

Niminath Annasaheb Rajmane,
Occ: Service, r/o Neminath
Bldgs, Raviwar, Madhavnagar,
Tal. Miraj, Dist: Sangli. .... Respondent

Shri A.K. Abhyankar for the Petitioner.

Shri T.S. Ingale for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 24, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records.

2. The petitioner challenges the judgment passed by the lower Court on 25-1-1993 in Regular Civil Appeal No.574 of 1987 whereby the appeal filed by the petitioner against the decree of eviction dated 25-9-1987 passed by the trial Court has been dismissed.

3. The facts relevant for the decision are that the

petitioner is a tenant in respect of two rooms in Rajmane Chawl, bearing House Nos.5-7/508, Raviwar Peth, Madhavnagar, Taluka Miraj, District Sangli on a monthly rent of Rs.40 and the respondent is the landlord/owner of the suit premisses. A notice demanding arrears of rent for the period from 1-10-1980 came to be issued by the respondent on 8-1-1986 and which was received by the petitioner on 9-1-1986. The petitioner replied to the said notice contending that all the arrears have already been paid and that there was a suit between the parties wherein they had arrived at a compromise and the rent was paid in advance when a suit came to be filed by the respondent against the petitioner for his eviction on the ground of default in payment of rent being Regular Civil Suit No.278 of 1986. After hearing the parties and considering the evidence on record, the trial Court decreed the suit holding that the demand notice in compliance with Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 was duly served upon the petitioner and that the respondent established that the petitioner was in arrears of rent for more than six months and that therefore the petitioner was held to be liable to be evicted from the suit premises. The appeal against the same was dismissed while confirming the findings of the trial Court.

4. Upon haring the learned Advocates and on perusal of the records, it is seen that both the Courts below, on detail analysis of the evidence on record, have arrived at the finding that the petitioner has not been able to establish his claim that he had paid the rent for the period from 1-10-1980 till the service of notice of demand in terms of Section 12(2) of the said Act nor there was any application filed for fixation of standard rent consequent to receipt of such notice. Only defence which was sought to be raised by the petitioner was about the earlier suit between the parties and the advance payment of rent in the process of compromise which was allegedly arrived at in the said suit. The petitioner, however, could not establish his claim, either as regards the advance payment of rent or even as regards prior litigation between the parties.

5. At the appellate stage, attempt was made by the petitioner to produce further evidence on record in the form of some money order receipts. The lower Appellate Court even after considering the said evidence has arrived at the finding that the total amount of rent which is disclosed to have been sent by money orders was Rs.160/-, once in relation to one month amounting to Rs.40/- and on the second occasion amounting to Rs.120 being the rent for three months. Undisputedly, the claim of the respondent regarding arrears was for the

period from 1-10-1980 till December, 1985.

6. Defence was also sought to be raised that the respondent failed to issue receipt in relation to the payment of rent. However, in the course of recording of the evidence it was revealed that the petitioner was in possession of some of the receipts issued by the respondent in relation to the payment of rent relating to the suit premises. Obviously therefore, the contention of the petitioner regarding failure on the part of the respondent to issue receipts was rightly disbelieved by both the Courts below.

7. Both the Courts below having arrived at the concurrent findings regarding the non-payment of rent for the period during which it was claimed to have remained to have not been paid by the petitioner to the respondent, and the said finding having been arrived at on detail analysis of the evidence on record, besides being a finding of fact, the same does not warrant interference in writ jurisdiction.

8. As no case is made out for interference in writ jurisdiction, the petition fails and is hereby dismissed. The rule is discharged. Interim relief stands vacated. There shall be no order as to costs.